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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,405

04/14/2006

Frank Erwin Schulte

740116-614

8708

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7590

03/16/2010

ROBERTS MLOTKOWSKI SAFRAN & COLE, P.C.

Intellectual Property Department

P.O. Box 10064

MCLEAN, VA 22102-8064

EXAMINER

WOOD, JONATHAN K

ART UNIT

PAPER NUMBER

3754

NOTIFICATION DATE

DELIVERY MODE

03/16/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

lgallaugh@rmsclaw.com

dbeltran@rmsclaw.com

bdiaz@rmsclaw.com

Office Action Summary	Application No. 10/595,405	Applicant(s) SCHULTE ET AL.	
	Examiner JONATHAN WOOD	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19,20,25-28,30 and 38-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19,20,25-28,30 and 38-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 19, 20, 25-28, 30 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,826,756 to *Foster (Foster)* in view of US Patent No. 5,507,626 to *Yang (Yang)*, US PG PUB No. 2003/0150876 A1 to *Walters et al. (Walters)* and US Patent No. 6,910,606 B2 to *Martin et al. (Martin)*.

Foster discloses a dispenser pump comprising a pump housing (14') attachable to a container (col. 3, line 33), a pump shaft (16') movable relative to the pump housing (col. 3, ll. 20-21), a dispenser head (56') on the pump shaft, a first sleeve section (98) which extends from the dispenser head toward the pump housing (col. 6, ll. 2-3) and radially surrounds the pump shaft, and a third sleeve section (92') mounted on a collar (26') of the pump housing and movable into the first sleeve to form a telescopically extendable splash protection around the pump shaft (col. 6, ll. 2-7), wherein a spring (42') pretensions the pump shaft and is located on a guide sleeve (indicated generally by 86' in Figure 5) which is held by the pump housing surrounding the pump shaft (Figure 5), the guide sleeve extending towards the dispenser head from the pump housing roughly up to the end area of the third sleeve section (Figure 5, the term "roughly" is equated to "approximately" which is considered an exceptionally broad term in claim language). *Foster* does not disclose a second sleeve section which extends from the first sleeve section, is movable into the first sleeve section, and allows for the

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third sleeve section to be moved into it so that the second sleeve section extends peripherally over the third sleeve section. *Foster* also does not specifically disclose that the sleeve sections are connected via cooperating projections. Finally, *Foster* does not disclose that there is an annular seal located on an inner side of the guide sleeve in an area of a free end of the guide sleeve.

However, *Yang* discloses a telescopic pump with a second sleeve section (20) which extends from a first sleeve section (10) and which is movable into the first sleeve section, the second sleeve section extending peripherally over a third sleeve section (30) (col. 3, ll. 1-20). It would have been obvious to one of ordinary skill in the art at the time of invention, under the teachings of *Yang*, to have incorporated a third sleeve section on the pump of *Foster* in order to reduce the number of pump strokes required to pump a certain amount of fluid while keeping the pump to a compact size (*Yang*, col. 1, ll. 49-54). This combination would require inserting an additional sleeve in between the first and third sleeves (98 and 92', respectively) of *Foster*.

Further, *Walters* shows a pump which utilizes a telescopic shroud having two sleeve sections (70 and 90), wherein the sleeve sections are interlocked via projections (92 and 80) and one of the projections is discontinuous (§75, ll. 6-7). It would have been obvious to one of ordinary skill in the art at the time of the invention, under the teachings of *Walters*, to have utilized projections like those of *Walters* to interconnect the three sleeves of *Foster* as modified by *Yang* in order to prevent separation of the sleeve sections (*Walters*, §80). The combination would result in the first sleeve section of *Foster* as modified by *Yang* having an inner projection engageable with an outer

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projection of the second sleeve section and similarly, an inner projection on the opposite end of the second sleeve section from the outer projection engageable with an outer projection of the third sleeve section. Although *Walters* shows a reverse orientation of the projections, it would have been obvious to have configured the projections as described above since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167. Especially since *Foster* as modified by *Yang* shows the third sleeve section having the largest diameter and receiving the other two sleeve sections internally, necessitating an inner projection on the third sleeve section to create an engagement with the second sleeve section.

Further, *Martin* discloses a pumping mechanism which utilizes a guide sleeve (88) contacting a spring (190) on its outside and sealingly guiding a pump shaft (102) on a free end thereof through the use of an annular seal (90). It would have been obvious to one of ordinary skill in the art at the time of the invention, under the teachings of *Martin*, to have incorporated an annular seal onto the free end of the guide sleeve of *Foster* as modified by *Yang* and *Walters* to sealingly guide the pump shaft in order to prevent contaminants from entering the pump shaft and prevent the contents of the pump chamber from entering into the interior of the sleeve sections and onto the spring.

Regarding claim 27, *Foster* as modified by *Yang*, *Walters* and *Martin* shows the overlapping areas of the sleeve sections having at least essentially the same length when the pump shaft is drawn in (*Foster*, Figure 6).

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Regarding claim 28, *Foster* as modified by *Yang, Walters* and *Martin* shows the sleeve sections are lockable in a downward position (*Foster*, col. 5, ll. 28-32 & 54-59).

Regarding claim 30, *Foster* as modified by *Yang, Walters* and *Martin* shows the third sleeve section radially surrounds the guide sleeve at a distance and an annular space is formed between (*Foster*, Figure 5).

Regarding claim 38, *Foster* as modified by *Yang, Walters* and *Martin* shows the spring is helical (*Foster*, 42').

3. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Foster* in view of *Yang, Walters*, and *Martin* as applied to claim 19 above, and further in view of US Patent No. 5,156,307 to *Callahan et al.* (*Callahan*).

Foster as modified by *Yang, Walters* and *Martin* shows all aspects of the applicant's invention as set forth in claim 19 and further shows a valve with a valve ball (*Foster*, 36'), but does not specifically disclose the valve ball is of plastic material. However, *Callahan* discloses a valve ball (13) of metal, plastic or ceramic (col. 3, line 5). It would have been obvious to one of ordinary skill in the art at the time of the invention, under the teachings of *Callahan*, to have made the valve ball of *Foster* as modified by *Yang, Walters* and *Martin* of plastic material in order to make the check valve more resistant to corrosive and aggressive fluids passing through the dispenser.

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4. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Foster* in view of *Yang*, *Walters* and *Martin* as applied to claim 19 above, and further in view of US Patent No. 4,071,172 to *Balogh* (*Balogh*).

Foster as modified by *Yang*, *Walters* and *Martin* shows all aspects of the applicant's invention as set forth in claim 19, but does not specifically disclose all parts in a location exposed to liquid being dispensed are made of plastic. However, *Balogh* discloses a liquid dispenser in which all the parts are made of a plastic material (col. 1, ll. 33-35). It would have been obvious to one of ordinary skill at the time of the invention, under the teachings of *Balogh*, to have made all parts of the dispenser of *Foster* as modified by *Yang*, *Walters* and *Martin* exposed to liquid being dispensed of plastic material in order to increase the dispenser's resistance to corrosive and aggressive fluids.

Response to Arguments

5. Applicant's arguments with respect to claim 19 have been considered but are moot in view of the new ground(s) of rejection.

Further, regarding the guide sleeve of *Foster* (indicated generally by 86' in Figure 5), examiner has stated that it anticipates the guide sleeve of claim 1 as written because the phrase "extending towards the dispenser head from the pump housing roughly up to the end area of the third sleeve section" is extremely broad. The guide sleeve of *Foster* extends towards the dispenser head towards the end area of the third sleeve section and therefore examiner contends that it extends "roughly up to the end area" using the

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broadest reasonable interpretation of the term "roughly". However, if applicant amended the language of the claim to more specifically define the length of the guide sleeve as extending exactly to the end area of the third sleeve, examiner would respond with a rejection under 35 USC 103(a), citing a design choice. There is no reason given in applicant's specification for the guide sleeve to extend to a specific point, and therefore examiner would contend that it would have been an obvious matter of design choice since it appears that the invention would perform equally well with a shorter guide sleeve.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN WOOD whose telephone number is (571)270-7422. The examiner can normally be reached on Monday through Friday, 7:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JKW/

Examiner, Art Unit 3754

/Kevin P. Shaver/

Supervisory Patent Examiner, Art Unit 3754

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